

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

MARIPOSA FARMS, LLC, a New Mexico  
limited liability company,

Plaintiff,

vs.

No. CIV-03-0779 JC/LAM

WESTFALIA-SURGE, INC., an Illinois  
corporation,

Defendant.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before me on *Westfalia's Motion for Review of Clerk's Taxing of Costs, Pursuant to Rule 54(d)(1), FED.R.CIV.P.*, filed June 22, 2005 (*Doc. 283*); and *Plaintiff's Motion to Review Clerk's Order Settling Costs (Doc. No. 284)*, filed June 30, 2005 (*Doc. 285*). The Court applies a *de novo* standard in reviewing a taxation order by the Clerk. *See Furr v. AT&T Techs., Inc.*, 824 F.2d 1537, 1550 n. 11 (10th Cir.1987).

Having considered the Motions, memoranda, all relevant authority, and being otherwise fully advised, I exercise my discretion pursuant to D.N.M.LR-Civ 54.3 and award costs to each party in an amount reflecting the percentage of fault attributed to each by the jury. Accordingly, I take the total of the taxable costs incurred by Plaintiff as properly determined by the Clerk to be \$17,053.32. *See Clerk's Dckt. Entry* dated June 13, 2005. Plaintiff was found by the jury to be 60% at fault and

an additional 10% of fault was attributed to a non-party. Thus, I will reduce Plaintiff's costs by 70% arriving at \$5,116 in costs taxed in its favor against Defendant. Similarly, Defendant's taxable costs as properly determined by the Clerk are \$9,022.58. *See Clerk's Order Settling Costs* at 3 ("Subtotal Costs Allowed"), filed June 23, 2005 (*Doc. 284*). Defendant was found to be liable and 30% of fault was attributed to it by the jury. Again, 10% of fault was attributed to a non-party. Thus, I will reduce Defendant's costs by 40%, arriving at \$5,413.55 in costs taxed against Plaintiff and in favor of Defendant. To the extent that this Order conflicts with prior determinations made by the Clerk of Court, this Order supersedes them.

WHEREFORE,

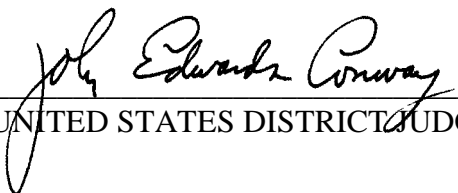
**IT IS ORDERED** that *Westfalia's Motion for Review of Clerk's Taxing of Costs, Pursuant to Rule 54(d)(1), FED.R.CIV.P.*, filed June 22, 2005 (*Doc. 283*); and *Plaintiff's Motion to Review Clerk's Order Settling Costs (Doc. No. 284)*, filed June 30, 2005 (*Doc. 285*) are **GRANTED**;

**IT IS FURTHER ORDERED** that costs are taxed against Defendant and in favor of Plaintiff in the amount of \$5,116.00;

and

**IT IS FINALLY ORDERED** that costs are taxed against Plaintiff and in favor of Defendant in the amount of \$5,413.55.

Dated October 7, 2005.

  
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SENIOR UNITED STATES DISTRICT JUDGE

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